

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

JOHN WALL MELTON,	§
TDCJ No. 1168128,	§
	§
Petitioner,	§
	§
v.	§ CIVIL ACTION H-05-2099
	§
DOUGLAS DRETKE,	§
	§
Respondent.	§

**MEMORANDUM ON DISMISSAL**

Petitioner seeks voluntary dismissal under Rule 41(a)(1), FED.R.CIV.P. A court exercising its discretion in considering a voluntary dismissal must follow the traditional principle that dismissal should be allowed unless the defendant will suffer some plain prejudice other than the mere prospect of a second lawsuit. *Holiday Queen Land Corporation v. Baker*, 489 F.2d 1031 (5th Cir. 1974). No such prejudice has been shown in here.

Accordingly, Petitioner's Motion for Voluntary Dismissal (Docket Entry No. 5, p. 2) is GRANTED, and this case is DISMISSED without prejudice. The Clerk will change the docket sheet to reflect that this case is a civil rights complaint under 42

U.S.C. § 1983, Nature of Suit No. 555.

It is ORDERED that any fee collection order entered in this case is VACATED.

No further withdrawals shall be made from the prison trust fund account of John Wall Melton, TDCJ No. 1168128, to collect filing fees in this case.

The Clerk shall provide copies to the parties; and the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, fax 936-437-4793.

SIGNED at Houston, Texas, on this 30<sup>th</sup> day of September, 2005.



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DAVID HITTNER

United States District Judge